

made subsequent to the sale ; and also, to the jurisdiction of the court, because the complainant had a full remedy at law.]

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THE CHANCELLOR :

I am of opinion that the objection to the jurisdiction of this court to grant relief in a case like the present cannot be sustained.

The complainants claim, as legatees, in remainder, under the will of Greenbury Lark, after the death or widowhood of his wife, Amelia Lark, whom he constituted his executrix, and to whom, *durante viduitate*, he devised and bequeathed his entire estate, real and personal, with remainder to his children, the complainants, share and share alike.

It may be inferred, from the authorities and treatises upon the subject, that the original jurisdiction over legacies was claimed and exercised in the temporal courts of common law ; or, in the language of an eminent judge, "it was a jurisdiction, *mixti fori*, exercised in the county court, where the bishop and sheriff sat together." Afterwards, the ecclesiastical courts obtained exclusive jurisdiction over the subject of legacies, as incident to the probate of wills of personal property ; but this jurisdiction, though it still subsists, is not invoked—a concurrent though much more efficient jurisdiction being exercised by courts of equity. The jurisdiction of chancery, in these cases, is vindicated upon various grounds, and especially, upon the ground, that the executor is treated as a trustee for the benefit of the legatees, which, of itself, and independent of all other reasons, would be abundant authority for the interposition of this court. 2 *Roper on Legacies*, ch. 25, pp. 536, 537 ; 1 *Story's Equity*, secs. 589, 590, 591, 592, 593.

It will be found, upon examining the cases cited by Judge Story in the sections just referred to, and in the case of *Wind. vs. Jekyll*, 1 *P. Wm.*, 575, that though no action will lie at law to recover a legacy, until, in the case of a specific legacy, the executor has assented thereto ; or, in the case of a pecuniary legacy, he has promised to pay it, that a court of equity, regarding the executor as a trustee, will compel him to assent and pay the legacy as a matter of trust. 1 *Story's Eq.*, sec. 540.